UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

AERITAS, LLC, Plaintiff v. **PANERA BREAD COMPANY, AND PANERA, LLC D/B/A PANDERA BREAD** Defendants	**Case No. 6:19-cv-00387** **JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Aeritas, LLC ("Aeritas" or "Plaintiff") files this Complaint for patent infringement against Panera Bread Company and Panera, LLC ("Panera" or "Defendants"), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq*.

PARTIES

2. Aeritas is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3. Upon information and belief, Panera Bread Company, is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 3630 S. Geyer Road, Suite 100, St. Louis, Missouri 63127. Defendants

operate businesses in multiple locations in this jurisdiction including, but not limited to at in this judicial district at 1000 S. 8th St. Waco, Texas 76706.

JURISDICTION AND VENUE

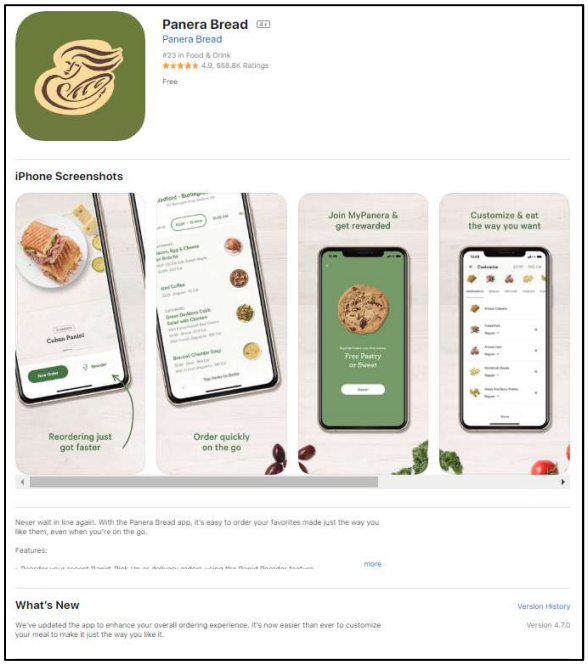
4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

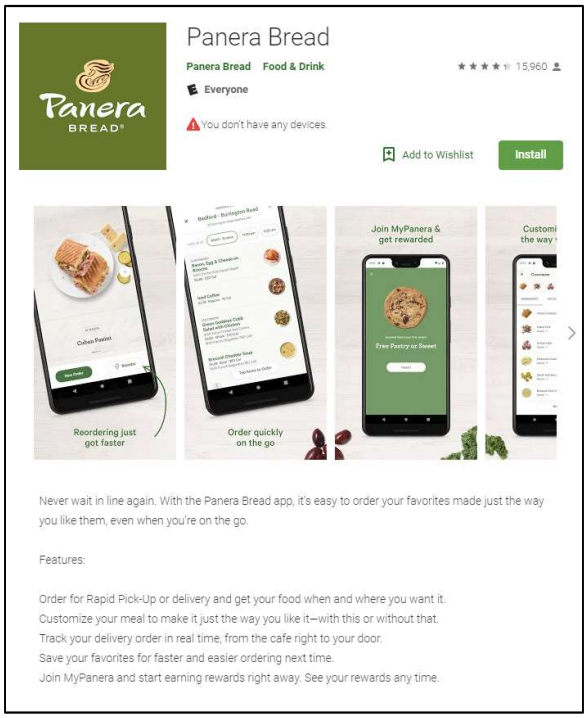
6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendants have committed acts of infringement and have regular and established places of business in this judicial district.

OVERVIEW OF THE PANERA BREAD APP

7. Defendant provides for its customers use the Panera Bread App, which is available for use with iOS and Android devices:

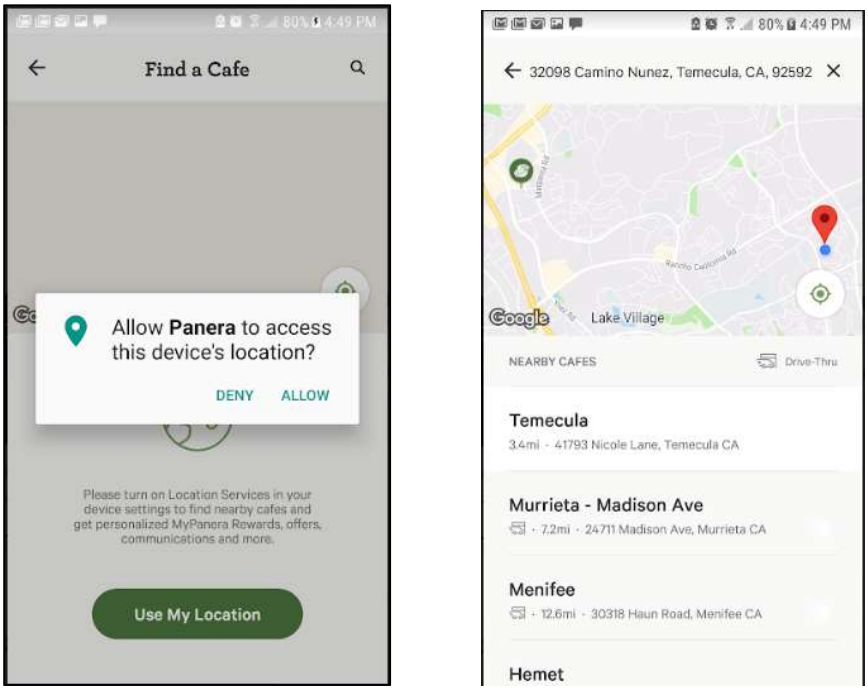


https://itunes.apple.com/us/app/panera-bread/id692365393?mt=8



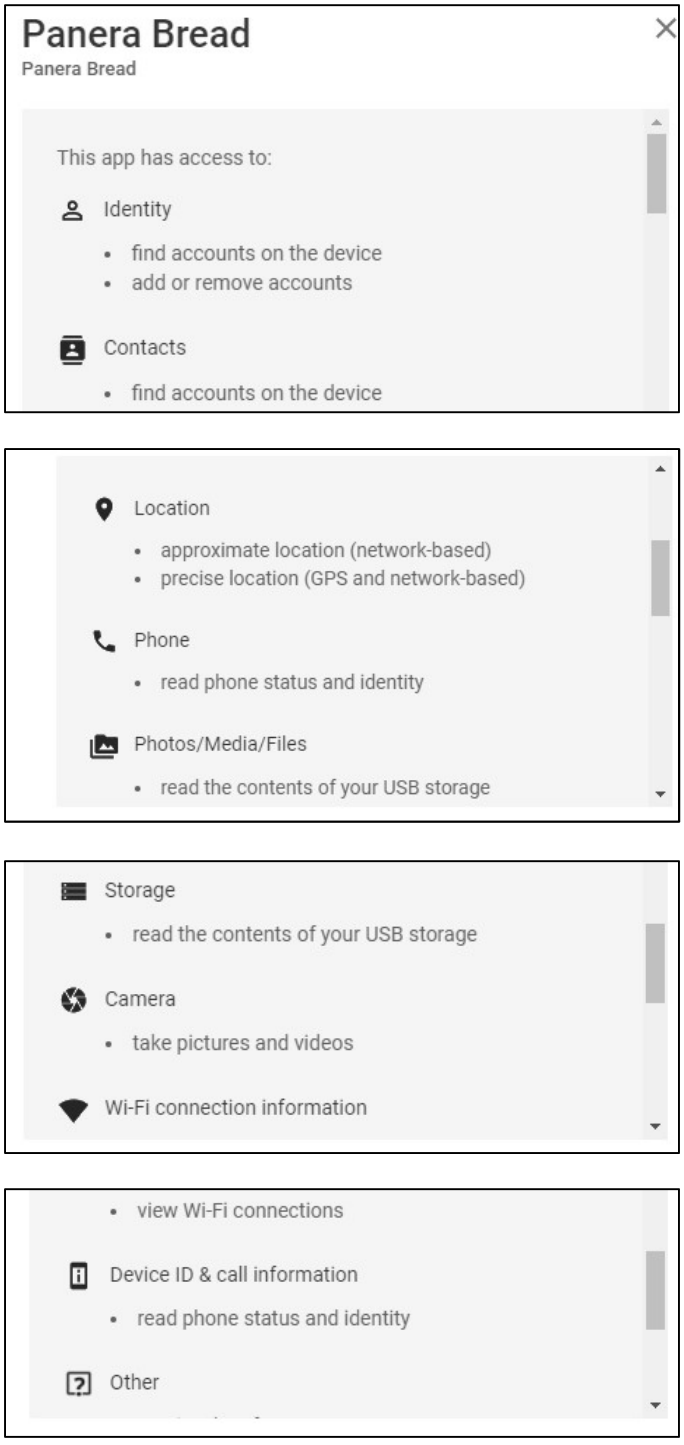
https://play.google.com/store/apps/details?id=com.panera.bread&hl=en_US

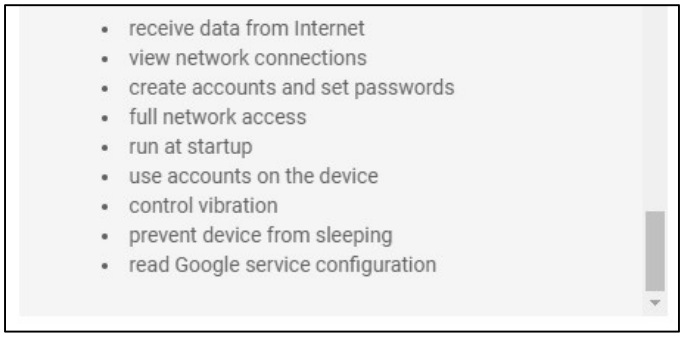
8. To enable use of the enhanced features of the Panera Bread App, Panera requires the user to enable location and notification services, which allows Panera to determine the location of the user's device and to push notifications to the user's device:

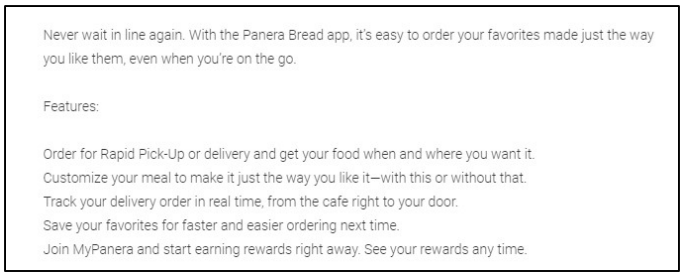


(Screen shots of Panera Bread App illustrating enabling location and notification features)

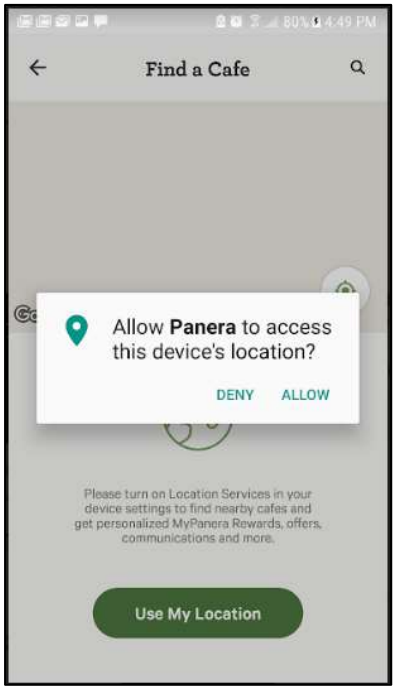
9. Panera hosts a server that interfaces with the Panera Bread App. With the Panera Bread App and server, Panera establishes a profile for the user. A benefit provided to users with an established profile is rewards. Users with MyPanera can receive push notifications tailored to the user's interests, can check into Panera stores, and can identify the nearest Panera store that has a particular desired meal, can also order for Rapid Pick-Up or track delivery.

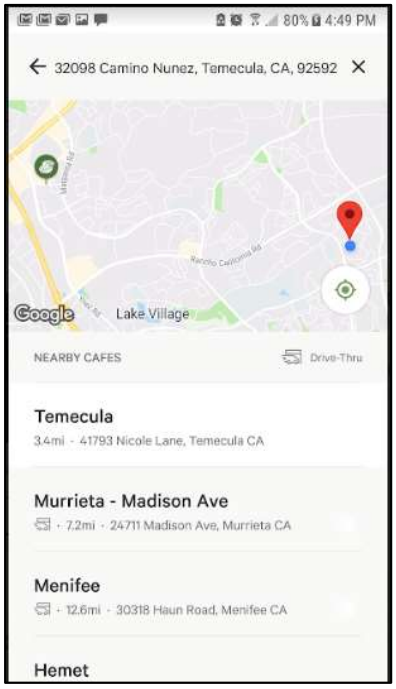

Panera Bread
Panera Bread
This app has access to:
Identity
find accounts on the device
add or remove accounts
Contacts
find accounts on the device
Location
approximate location (network-based)
precise location (GPS and network-based)
Phone
read phone status and identity
Photos/Media/Files
read the contents of your USB storage
Storage
read the contents of your USB storage
Camera
take pictures and videos
Wi-Fi connection information
view Wi-Fi connections
Device ID & call information
read phone status and identity
Other

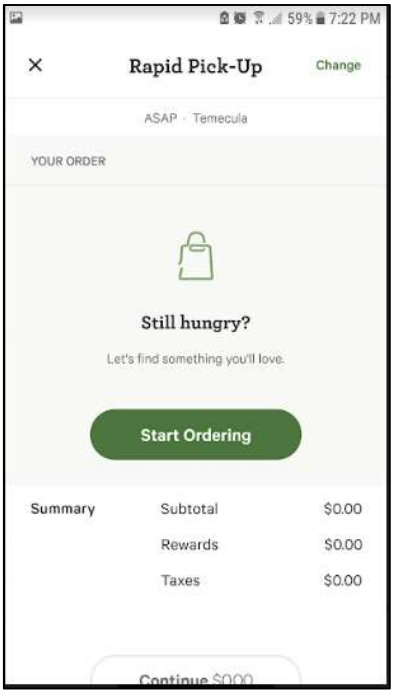


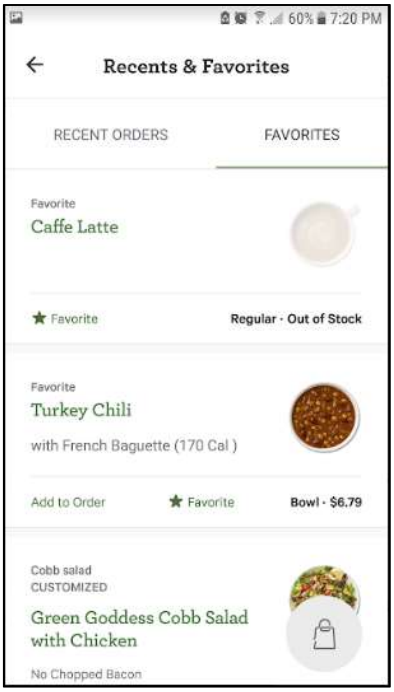


https://play.google.com/store/apps/details?id=com.panera.bread&hl=en_US



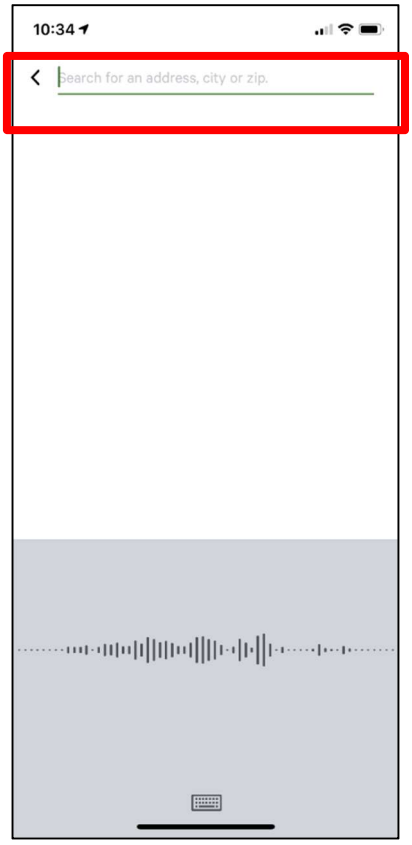






(Screen shots of Panera Bread App illustrating features of the Panera Bread App user profile)

10. With the Panera Bread App, users are able to search for a location using spoken voice input. The Panera Bread App provides a return result for the searched location.



(Screen shots of Panera Bread App illustrating features of the voice input)

COUNT I
(Infringement of U.S. Patent No. 7,706,819)

11. Aeritas incorporates paragraphs 1 through 10 as though fully set forth herein.

12. Plaintiff is the owner, by assignment, of U.S. Patent No. 7,706,819 (the "'819 Patent"), entitled MIXED-MODE INTERACTION, which issued on April 27, 2010. A copy of the '819 Patent is attached as Exhibit PX-819.

13. The '819 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

14. Defendants have been and are now infringing one or more claims of the '819 Patent under 35 U.S.C. § 271 by making and using the Panera Bread App with users' iOS and Android devices and the Panera servers in the United States without authority.

15. Defendant has also infringed the '819 Patent by encouraging users of the Panera Bread App to use the user's iOS or Android devices with the Panera App to practice the claims of the '819 Patent.

16. Claim 1 recites:

> 1. A method comprising:
>
> receiving spoken input from a wireless communication device;
>
> obtaining data identifying a current location of the wireless communication device;
>
> based on the current location of the wireless communication device and the spoken input, retrieving information;
>
> delivering, to the wireless communication device by a notification server, a non-verbal response to the spoken input, the non-verbal response based on the retrieved information and including a drill-down menu by which additional information related to the retrieved information can be obtained; and
>
> providing additional information related to the retrieved information in response to receipt of at least one additional input provided via the drill-down menu.

17. More particularly, Defendants infringe at least claim 1 of the '819 Patent. Defendants receive spoken input from a wireless communication device (e.g., when a user

searches for a location or specific store using voice input). Defendants obtain data identifying the current location of the mobile device (e.g., as evidenced by permissions required to access the device's location and subsequent provision of location-based information and the location of the device on a search result map). Based on the location and the spoken input, Defendants retrieve information (e.g., the nearby availability of stores subject to the voice search). Defendants deliver to the wireless device by a notification server, a non-verbal response to the spoken input, the non-verbal response based on the retrieved information and including a scroll-down menu by which additional information related to the retrieved information can be obtained (e.g., the nearby stores subject to the voice search, distance to mobile device). Defendants provide additional information related to the retrieved information in response to receipt of at least one additional input provided via the scroll-down menu (e.g., distance and other information about nearby stores in response to selection of the "nearest" link).

18. Aeritas has been damaged by Defendants' infringing activities.

COUNT II
(Infringement of U.S. Patent No. 8,055,285)

19. Aeritas incorporates paragraphs 1 through 10 as though fully set forth herein.

20. Plaintiff is the owner, by assignment, of U.S. Patent No. 8,055,285 (the "'285 Patent"), entitled MIXED-MODE INTERACTION, which issued on November 8, 2011. A copy of the '285 Patent is attached as Exhibit PX-285.

21. The '285 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

22. Defendants have been and are now infringing one or more claims of the '285 Patent under 35 U.S.C. § 271 by making and using the Panera Bread App with users' iOS and Android devices and the Panera server in the United States without authority.

23. Defendant has also infringed the '285 Patent by encouraging users of the Panera Bread App to use the user's iOS or Android devices with the Panera Bread App to practice the claims of the '285 Patent.

24. Claim 14 recites:

> 14. A method, comprising:
>
> at a first time, receiving and storing an input in a user profile in a database, the input comprising consumer interest data;
>
> at a second time distinct from the first time, obtaining data identifying a current location of the mobile communication device;
>
> based on the input stored in the user profile and the current location of the mobile communication device, initiating a search to locate information pertinent to the input;
>
> receiving results derived from the search; and
>
> in response to the input and the search, delivering, by a notification server, information to the mobile communications device.

25. More particularly, Defendants infringe at least claim 1 of the '285 Patent. Defendants receive and store an input in a user profile in a database, the input comprising consumer interest data (e.g., items in "Favorites"). At a second time, data identifying a current location of the mobile communications device on which the Accused

Instrumentality is installed is obtained (e.g., upon application launch or return to Favorites). Based on the input and location, Defendants perform a search to locate pertinent information (e.g., selection of "Favorites" from the results in a search for nearby stores) and receive the results of such search, distance from mobile device. Defendants then provide the information to the mobile communications device.

26. Aeritas has been damaged by Defendants' infringing activities.

COUNT III
(Infringement of U.S. Patent No. 9,390,435)

27. Aeritas incorporates paragraphs 1 through 10 as though fully set forth herein.

28. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,390,435 (the "'435 Patent"), entitled MIXED-MODE INTERACTION, which issued on February 6, 2018. A copy of the '435 Patent is attached as Exhibit PX-435.

29. The '435 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

30. Defendants have been and are now infringing one or more claims of the '435 Patent under 35 U.S.C. § 271 by making and using the Panera Bread App with users' iOS and Android devices and the servers in the United States without authority.

31. Defendant has also infringed the '435 Patent by encouraging users of the Panera Bread App to use the user's iOS or Android devices with the Panera Bread App to practice the claims of the '435 Patent.

32. Claim 1 recites:

> 1. Apparatus, comprising:
>
> a processor;

> computer memory holding computer program instructions to:
>
> receive first data indicating a permission to provide a mobile device user a notification, the notification having an associated notification criteria;
>
> at a given time, determine a location of a mobile device;
>
> based at least in part on a determined location of the mobile device and the notification criteria, to provide to the mobile device the notification, the notification being associated at the mobile device with one of: an audible, visual and tactile alert;
>
> receive second data as a result of an input being received at the mobile device following the notification;
>
> retrieve information associated with the input and the determined location of the mobile device; and
>
> provide to the mobile device a response to the input, the response based on the retrieved information.

33. More particularly, Defendants infringe at least claim 1 of the '435 Patent. On information and belief, Defendants employ a processor and computer memory holding computer program instructions to perform the functions described herein. Defendants receive data indicating permission to provide a notification to a mobile device user in accordance with notification criteria (e.g., according to App notification settings). At a

given time, Defendants determine the location of the mobile device (e.g., as evidenced by permissions required to access the device's location and subsequent provision of location-based information). Based on the location and notification criteria, Defendants provide at least a visual alert notification (e.g., a push notification to the mobile device when a user arrives at a Panera store). Defendants receive second data as a result of an input being received at the mobile device (e.g., interaction with the notification), retrieve information associated with the input and location (e.g., information about the specific Panera store), and provide responsive information to the mobile device (e.g., store information). On information and belief, the program instructions include first and second components of a rules engine to evaluate notification criteria and execute notification rules (e.g., as evidenced by the provision of a notification based on conditions).

34. Aeritas has been damaged by Defendants' infringing activities.

COUNT IV
(Infringement of U.S. Patent No. 9,888,107)

35. Aeritas incorporates paragraphs 1 through 10 as though fully set forth herein.

36. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,888,107 (the "'107 Patent"), entitled MIXED-MODE INTERACTION, which issued on February 6, 2018. A copy of the '107 Patent is attached as Exhibit PX-107.

37. The '107 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

38. Defendants have been and are now infringing one or more claims of the '107 Patent under 35 U.S.C. § 271 by making and using the Panera Bread App with users' iOS and Android devices and the Panera servers in the United States without authority.

39. Defendant has also infringed the '107 Patent by encouraging users of the Panera Bread App to use the user's iOS or Android devices with the Panera Bread App to practice the claims of the '107 Patent.

40. Claim 5 recites:

> 5. Apparatus, comprising:
>
> a processor;
>
> computer memory holding computer program instructions to:
>
> receive first data indicating a permission to provide a mobile device user a notification, the notification having an associated notification criteria;
>
> at a given time, determine a location of a mobile device;
>
> based at least in part on a determined location of the mobile device and the notification criteria, to provide to the mobile device the notification, the notification being associated at the mobile device with one of: an audible, visual and tactile alert;
>
> receive second data as a result of an input being received at the mobile device following the notification;
>
> retrieve information associated with the input and the determined location of the mobile device; and
>
> provide to the mobile device a response to the input, the response

based on the retrieved information;

wherein the computer program instructions comprise a rules engine that comprises first and second components, a first component that evaluates the notification criteria, and a second component that executes notification rules.

41. More particularly, Defendants infringe at least claim 5 of the '107 Patent. On information and belief, Defendants employ a processor and computer memory holding computer program instructions to perform the functions described herein. Defendants receive data indicating permission to provide a notification to a mobile device user in accordance with notification criteria (e.g., according to App notification settings). At a given time, Defendants determine the location of the mobile device (e.g., as evidenced by permissions required to access the device's location and subsequent provision of location-based information). Based on the location and notification criteria, Defendants provide at least a visual alert notification (e.g., a push notification to the mobile device when a user arrives at a Panera store). Defendants receive second data as a result of an input being received at the mobile device (e.g., interaction with the notification), retrieve information associated with the input and location (e.g., information about the specific Panera store), and provide responsive information to the mobile device (e.g., store information). On information and belief, the program instructions include first and second components of a rules engine to evaluate notification criteria and execute notification rules (e.g., as evidenced by the provision of a notification based on conditions).

42. Aeritas has been damaged by Defendants' infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant:

1. declaring that the Defendant has infringed the '819, the '285, the '435, and the '107 Patents;
2. awarding Plaintiff its damages suffered as a result of Defendants' infringement of the '819, the '285, the '435, and the '107 Patents;
3. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and
4. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: June 24, 2019

Respectfully submitted,

/s/ Raymond W. Mort, III

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